

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY AUSBORN,

Petitioner,

v.

CDCR,

Respondent.

No. 2:20-cv-1399 DB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis. Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

In his petition, petitioner challenges a December 2018 disciplinary conviction. (See ECF No. 1 at 5, 16, 21.) Petitioner challenged the same disciplinary conviction in a previously-filed petition in this court – Ausborn v. CDCR, (“Ausborn I”) No. 2:20-cv-0181 KJM DB P. Upon screening the petition in Ausborn I, the court found it likely petitioner had not exhausted his state remedies because he had not presented his claim regarding his disciplinary conviction to the California Supreme Court. The court then ordered petitioner to explain whether he had done so.

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When petitioner failed to respond to the court's order, on May 5, 2020, the court dismissed the case. See Ausborn I (ECF No. 9.)

In the present case, petitioner states that he raised this disciplinary conviction claim with the state superior court. (See ECF No. 1 at 7.) Attached to his petition is a copy of a May 27, 2020 ruling from the San Joaquin County Superior Court dismissing petitioner's habeas petition challenging a 2018 rules violation hearing. (Id. at 16.) However, the petition indicates that petitioner has not fully exhausted his state remedies by fairly presenting his claim to the California Supreme Court. See Duncan v. Henry, 513 U.S. 364, 365 (1995). As petitioner was informed in Ausborn I, this court may not grant a habeas petition unless petitioner first exhausts his state judicial remedies through the state's highest court. Ausborn I (ECF No. 8); 28 U.S.C. § 2254(b)(1).

Petitioner will again be given an opportunity to demonstrate that he has fully exhausted his state judicial remedies. Petitioner is warned that if he has not fully exhausted his claim or if he fails to file a timely response to this order, this court will recommend this case be dismissed.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Petitioner's application to proceed in forma pauperis (ECF No. 4) is granted;
2. Within thirty (30) days of the date of this order, petitioner must inform the court whether he has presented any federal constitutional claims regarding his disciplinary conviction to the California Supreme Court. If possible, petitioner should provide the court with a copy of the petition filed in the California Supreme Court along with a copy of any ruling made by the California Supreme Court.
3. Plaintiff is warned that if he fails to comply with this order, this court will recommend dismissal of this action.

Dated: August 27, 2020

DLB:9/DB/prisoner-habeas/ausb1399.scrn osc


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE